

35-A §7106. Consumer protection

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35-A §7106. Consumer protection

1. Unauthorized change of carrier. This subsection governs the initiation of a change in a customer's local or intrastate interexchange carrier that is not authorized by that consumer.

A. Notwithstanding Title 32, chapter 69, subchapter 5 or Title 32, section 14716, and except as otherwise provided by the commission by rule adopted pursuant to subsection 3, a local or intrastate interexchange carrier may not initiate the change of a customer's local or intrastate carrier unless the change is verified by one of the following methods:

- (1) Written or electronically signed authorization from the customer;
- (2) Toll-free electronic authorization placed from the telephone number that is the subject of the change order; or
- (3) Oral authorization obtained by an independent 3rd party. [2003 , c . 530 , §1 (AMD) .]

B. When a customer's service is changed to a new local or intrastate interexchange carrier, the new local or intrastate interexchange carrier shall maintain for 24 months a record of nonpublic customer-specific information that establishes that the customer authorized the change. [2003 , c . 530 , §2 (AMD) .]

C. [2003 , c . 530 , §3 (RP) .]

D. A local or intrastate interexchange carrier that has initiated an unauthorized customer change shall:

- (1) Pay all usual and customary charges associated with returning the customer to the customer's original local or intrastate interexchange carrier;
- (2) Return to the customer any amount paid to that carrier by the customer or on the customer's behalf;
- (3) Pay any access charges and related charges to access providers or to an underlying carrier when applicable; and
- (4) Upon request, provide all billing records to the original local or intrastate interexchange carrier from which the customer was changed to enable the original local or intrastate interexchange carrier to comply with this section and any commission rules adopted under this section. [1997 , c . 702 , §1 (NEW) .]

E. Except as otherwise provided by the commission by rule in accordance with subsection 3, a customer subjected to an unauthorized change of local or intrastate interexchange carrier is responsible for charges of the authorized carrier for the customer's usage during the period the customer was served by the unauthorized carrier unless:

- (1) The customer has paid the unauthorized carrier for the usage; and

(2) The amount paid by the customer has not been returned by the unauthorized carrier to the customer in accordance with paragraph D, subparagraph (2).

If the unauthorized carrier has not returned to the customer the amount paid by the customer to the unauthorized carrier in accordance with paragraph D, subparagraph (2), the unauthorized carrier shall pay to the authorized carrier the charges of the authorized carrier for the customer's usage during the period the customer was served by the unauthorized carrier. [1997, c. 702, §1 (NEW).]

[2003, c. 530, §§1-3 (AMD) .]

2. Penalty. A local or intrastate interexchange carrier that violates this section is subject to penalty in accordance with this subsection.

A. The commission may impose an administrative penalty against any person who violates this section or any rule or order adopted pursuant to this section. In determining whether to impose a penalty, the commission may consider whether the violation was intentional. The penalty for a violation may be in an amount not to exceed \$5,000 for each day the violation continues, up to a maximum of \$40,000 for a first offense and a maximum of \$110,000 for subsequent offenses. The amount of the penalty must be based on:

- (1) The severity of the violation, including the intent of the violator, the nature, circumstances, extent and gravity of any prohibited acts;
- (2) The history of previous violations;
- (3) The amount necessary to deter future violations;
- (4) Good faith attempts to comply after notification of a violation; and
- (5) Such other matters as justice requires. [2003, c. 505, §40 (AMD) .]

B. If the commission finds that a local or intrastate interexchange carrier has repeatedly violated this section or rules adopted under this section, the commission shall order the utility to take corrective action as necessary. In addition, the commission, if consistent with the public interest, may suspend, restrict or revoke the registration or certificate of the local or intrastate interexchange carrier, so as to deny the local or intrastate interexchange carrier the right to provide service in this State. [1997, c. 702, §1 (NEW) .]

C. [2003, c. 505, §41 (RP) .]

D. The commission may order a telephone utility to withhold funds collected on behalf of a carrier that is subject to an administrative penalty proceeding conducted pursuant to this section if it finds that it is more likely than not that penalties will be imposed or customer refunds will be ordered that are equal to or greater than the amount ordered withheld. The commission shall provide the carrier notice and an opportunity to be heard prior to ordering funds to be withheld. If the commission finds that there is a clear danger that, if notified in advance, the carrier will conceal or otherwise make funds unavailable to satisfy penalties or customer refunds prior to providing notice and an opportunity to be heard, it may issue an order to the public utility to withhold the funds without providing notice or an opportunity to be heard. To issue such an order, the commission must also make the first finding required by this paragraph. The commission shall, without delay, provide a copy of the order to the carrier along with written notice that the carrier, on request, will be provided with an opportunity to contest the finding that it is more likely than not that penalties will be imposed or customer refunds will be ordered that are equal to or greater than the amount ordered withheld. [2003, c. 505, §42 (NEW) .]

[2003, c. 505, §§40-42 (AMD) .]

3. Rules. The commission shall adopt nondiscriminatory and competitively neutral rules to further implement this section.

A. Except as otherwise provided in this subsection, rules adopted by the commission under this subsection, including rules regarding customer verification of a change of carrier, must be consistent with the rules adopted by the Federal Communications Commission governing the initiation of a change of a customer's interstate carrier. [2003, c. 530, §4 (AMD) .]

B. The commission, in adopting rules governing customer verification of a change of carrier, shall consider whether customer verification is necessary in the case of customer-initiated calls. [1997, c. 702, §1 (NEW) .]

C. The commission shall adopt by rule a definition of those actions that constitute initiation of a change of carrier under this section and a definition of actions that do not constitute the initiation of a change of carrier. The commission shall consider whether actions not constituting the initiation of a change of a customer's carrier include actions of a local exchange carrier to change a customer's carrier:

(1) Undertaken at the direction of a carrier to which the customer's service is changed or with the oral or written authorization of the customer; and

(2) That do not result in the customer being changed to the service of the carrier undertaking the actions or to an affiliate of the carrier undertaking the actions. [1997, c. 702, §1 (NEW) .]

D. Notwithstanding subsection 1, paragraph E, if the Federal Communications Commission provides by rule that customers are not responsible for charges of an authorized interstate carrier for the customer's usage during the period the customer was served by an unauthorized interstate carrier, the commission by rule may provide that a customer is not responsible for charges of an authorized local or intrastate carrier for the customer's usage during the period the customer was served by an unauthorized local or intrastate carrier. [1997, c. 702, §1 (NEW) .]

Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter II-A.

[2003, c. 530, §4 (AMD) .]

4. Enforcement. The commission through its own counsel or through the Attorney General may apply to the Superior Court of any county of the State to enforce any lawful order made or action taken by the commission pursuant to this section. The court may issue such orders, preliminary or final, as it considers proper under the facts established before the court.

[1997, c. 702, §1 (NEW) .]

5. Notice to the Attorney General. If the commission has reason to believe that any carrier has violated any provision of the law for which criminal prosecution is provided and would be in order or any law regarding fraud or consumer protection, the Commission shall notify the Attorney General. The Attorney General shall promptly institute any actions or proceedings the Attorney General considers appropriate.

[1997, c. 702, §1 (NEW) .]

SECTION HISTORY

1997, c. 702, §1 (NEW). 2001, c. 71, §2 (AMD). 2003, c. 505, §§40-42 (AMD). 2003, c. 530, §§1-4 (AMD).